

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Application by SBC Communications Inc.)

Southwestern Bell Telephone Company, and)

Southwestern Bell Communications Services, Inc.)

d/b/a/ Southwestern Bell Long Distance for Provision)

of In-Region InterLATA Services in Oklahoma)

CC Docket No. 97-121

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF DOBSON WIRELESS, INC.
IN SUPPORT OF MOTION TO DISMISS**

Dobson Wireless, Inc. ("Dobson") submits these comments in support of the Motion filed April 23, 1997, by the Association for Local Telecommunications Services ("ALTS"), requesting the Commission to dismiss the Application filed by SBC Communications Inc. ("SBC") for authorization to provide in-region, interLATA service in Oklahoma.

Dobson has a resale agreement with Southwestern Bell executed October 9 and 10, 1996, and approved by the Oklahoma Corporation Commission on December 23, 1996. Pursuant to that agreement, Dobson plans to offer local telecommunications service to residential and business subscribers in Oklahoma by resale, once necessary testing is completed. A copy of the resale agreement and the Oklahoma Commission's approval order appear in the Appendix to SBC's Application, Vol. III Tab 3.

On December 13, 1996, Dobson commenced interconnection negotiations under the 1996 Act with SBC, and the parties are presently negotiating an interconnection agreement. Pursuant to this agreement, Dobson plans to offer facilities-based local telecommunications service to business subscribers in Oklahoma, but has no present plans to offer facilities-based service to residential

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subscribers.

Dobson agrees with ALTS's position that the pendency of this type of request for interconnection (when made more than three months before SBC's application, as Dobson's request was) precludes the RBOC from proceeding under Track B. Section 271(c)(1)(B) of the Act allows the RBOC to proceed under Track B only when "no such provider" has filed an interconnection request more than three months before the RBOC's application. "Such provider" refers to section 271(c)(1)(A), which states that an RBOC meets the requirements of subparagraph (A) if it is providing access and interconnection "for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers." Dobson will be an "unaffiliated competing provider" meeting that description once it has an interconnection agreement, and consequently the pendency of its request for such an agreement precludes SBC from proceeding under Track A.

SBC will presumably argue that Dobson's request does not preclude SBC from proceeding under Track B, because Dobson does not offer service to residential and business subscribers "exclusively . . . or predominantly over [its] own telephone exchange service facilities" within the meaning of the second sentence of section 271(c)(1)(A). That argument is mistaken. The second sentence of section 271(c)(1)(A) is prefaced by the phrase "[f]or the purpose of this subparagraph" That means that the "exclusively or predominantly" test must be met before an application may proceed under subparagraph (Track) A. However, the "exclusively or predominantly" test does not apply for purposes of subparagraph (B), and thus a pending request (such as Dobson's) need not meet the "exclusively or predominantly" test to qualify as a request which forecloses Track B.

This reading makes perfect sense. The "exclusively or predominantly" test cannot be

applied to a provider whose request for interconnection is pending, because it would be impossible to assess the relative extent of a competing provider's resale and facilities-based services until both aspects of its business are in operation. That cannot happen until the interconnection and resale agreements have actually been signed and implemented and have been in operation for a period of time. Here, for example, Dobson has yet to obtain an approved interconnection agreement. It is still negotiating the terms of physical collocation at SBC's Oklahoma City "Central" central office. Until that happens, Dobson will have no facilities-based local business. In addition, while Dobson has a resale Agreement, it is not yet providing service under it. In this situation, it would be nonsense to apply the "exclusively or predominantly" test to Dobson.

As ALTS correctly argues, the language of section 271(c)(1)(B) confirms that Congress envisaged the existence of a hiatus, during which pending requests would preclude the RBOC from proceeding under Track B, even though the requesters are not yet operational and thus cannot be assessed under the "exclusively or predominantly" test of Track A. See ALTS Motion at 4-5. The last sentence of section 271(c)(1)(B) provides that a pending request does not disqualify the RBOC from proceeding under Track A if the State certifies that the requesting provider "failed to negotiate in good faith" or "fail[ed] to comply, within a reasonable period of time, with the implementation schedule contained in [the interconnection] agreement." That sentence recognizes that there will be a period of time, while a request is pending, during which good-faith negotiations are taking place, an agreement is signed, and the agreement is implemented. During this period, the competing provider will not be in operation. Thus its operations cannot be assessed for compliance with the "exclusively or predominantly" test under Track A. Nevertheless, as long as the competing provider is negotiating in good faith and is complying with the implementation schedule, the pendency of its request precludes the RBOC from proceeding under Track B.

In this case, there is a particularly strong reason not to apply the “exclusively or predominantly” test to the facilities-based operations of competing providers, to determine whether their pending requests preclude SBC from proceeding under Track B. That is because the interim interconnection rates presently in effect were approved by the Oklahoma Corporation Commission on the basis of SBC’s recommended rates, with no finding -- nor even a preliminary assessment -- as to whether the rates are just, reasonable, and based on cost.¹ The Oklahoma Commission has left all assessment of the cost basis of SBC’s interconnection rates to its proceeding on permanent rates. That means that competitors such as Dobson who intend to provide facilities-based service must make their business decisions based on interim rates set at the levels recommended by SBC, with only the uncertain prospect of a later true-up at some future date in an uncertain amount.

Given these uncertainties, it would be particularly inappropriate to assess Dobson’s intended facilities-based operations under the “exclusively or predominantly” test of Track A at this stage -- thereby allowing SBC to proceed under Track B, and removing any remaining incentive to cooperate in the yet-to-be accomplished task of establishing the conditions for effective facilities-based local competition in Oklahoma.

¹ The rates presently in effect were established in the AT&T arbitration. Cause No. PUD 960000218 (App. Vol. III Tab 9). On the issue of interim rates for unbundled elements, the Oklahoma Commission adopted the Arbitrator’s findings. Commission’s Order at p. 4. In the proceedings before the Arbitrator, AT&T and SBC proposed different rates, based on different versions of costs. The Arbitrator’s decision was as follows:

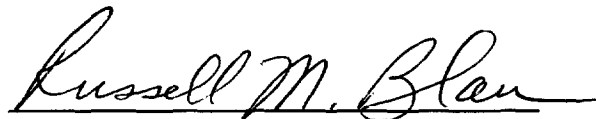
Findings and Recommendations: The Arbitrator does not recommend any particular methodology or cost study be adopted at this time. The Arbitrator does adopt SWBT’s proposed rates on the basis that if a true-up is needed in the future it would be easier to explain to customers rather than trying to explain a lower price being trued-up to a higher price.

Id., Report and Recommendations of the Arbitrator at p. 20.

CONCLUSION

For these reasons, SBC's Section 271 application should be dismissed.

Respectfully submitted,


A handwritten signature in cursive script, reading "Russell M. Blau". The signature is written in black ink and is positioned above the printed name and address.

Russell M. Blau
Douglas G. Bonner
Robert V. Zener
SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116
202-424-7500

Dated: April 28, 1997

Certificate of Service

I hereby certify that copies of the foregoing Motion to Dismiss and Request for Sanctions by the Association for Local Telecommunications Services were served this 28th day of April, 1997, to each on the attached service list, either by hand delivery (as indicated by an asterisk (*)) or by first class mail.



Regina Keeney*
Chief, Common Carrier
Bureau
FCC, Room 500
1919 M Street, N.W.
Washington, D.C. 20554

Richard Metzger*
Deputy Chief, CCB
FCC, Room 500
1919 M Street, N.W.
Washington, D.C. 20554

Larry Atlas*
Deputy Chief, CCB
FCC, Room 500
1919 M Street, N.W.
Washington, D.C. 20554

Richard K. Welch*
Chief, Policy & Planning,
CCB
FCC, Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Brent Olson*
Common Carrier Bureau
FCC, Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Melissa Waksman*
Common Carrier Bureau
FCC, Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Melissa Waksman*
Common Carrier Bureau
FCC, Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Carol Matthey*
Common Carrier Bureau
FCC, Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Don Russell*
Chief, Telecommunications
Task Force
Antitrust Division
U.S. Department of Justice
Room 8104 Judiciary Center
555 4th Street, N.W.
Washington, D.C. 20001

Michael K. Kellogg*
Austin C. Schlick
Kellogg, Huber, Hansen,
Todd & Evans
1301 K St., N.W.
Suite 1000 West
Washington, D.C. 20005

James D. Ellis
Paul K. Mancini
SBC Communications
One Bell Center
St. Louis, Missouri 63101

Todd F. Silbergeld*
SBC Communications Inc.
1401 Eye St., N.W.
Suite 1100
Washington, D.C. 20005

J. Manning Lee
Vice President, Regulatory
Affairs
Two Teleport Drive, Ste. 300
Staten Island, NY 10311

John C. Shapleigh
Brooks Fiber Properties
425 Woods Mill Road South
Suite 300
Town and Country, MO 63017

Susan Jin Davis
MCI Telecommunications
Corp.
1801 Pennsylvania Ave.,
N.W., Room 444
Washington, D.C. 20006

Mark C. Rosenblum
AT&T Corp.
295 North Maple Avenue
Room 2345I1
Basking Ridge, NJ 07920

Richard H. Juhnke
Sprint Communications
1850 M St., N.W.
Suite 1100
Washington, D.C. 20036

ITS Inc.*
2100 M St., N.W., Ste 140
Washington, D.C. 20037

Hon. Reed E. Hundt*
Federal Communications
Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Hon. James H. Quello*
Federal Communications
Commission
1919 M St., N.W., Room 802
Washington, D.C. 20554

Hon. Rachelle B. Chong*
Federal Communications
Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Hon. Susan Ness*
Federal Communications
Commission
1919 M St., N.W., Room 832
Washington, D.C. 20554

Daniel Gonzalez*
Legal Advisor
Office of Comr. Chong
FCC
1919 M St., NW Room 844
Washington, D.C. 20554

Tom Boasberg*
Senior Legal Advisor
Office of Chairman Hundt
FCC
1919 M St., N.W. Rm.814
Washington, D.C. 20554

James Casserly*
Senior Legal Advisor
Office of Commr. Ness
FCC
1919 M St., NW Room 832
Washington, D.C. 20554

James Coltharp*
Special Counsel
Office of Commr. Quello*
FCC
1919 M St., N.W., Room 802
Washington, D.C. 20554